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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/067,944	02/08/2002	Isamu Yamaguchi	219229US0	6617

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EXAMINER

NUTTER, NATHAN M

ART UNIT PAPER NUMBER

1711

DATE MAILED: 05/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/067,944

Applicant(s)

YAMAGUCHI ET AL.

Examiner

Nathan M. Nutter

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 March 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input checked="" type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. <u>02-06</u> . |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____. | 6) <input type="checkbox"/> Other: _____. |

DETAILED ACTION

Oath/Declaration

The Declaration of Isamu Yamaguchi, filed 17 October 2005, under 37 C.F.R. 1.132 has been reviewed and considered. The Declaration is not deemed to be conclusive regarding any particular threne dyes since all dyes recited in claim 1 were not compared with any substantial number of alternative dyes. Too little evidence is presented to make any such sweeping conclusions as proffered by counsel that "threne dyes provide heat discoloration resistance and weatherability that is superior to a particular direct dye and a particular reactive dye." Nothing in the claims is drawn to either feature. The Declaration is not deemed to be supportive of patentability as drawn to any particular threne dyes employed and recited herein.

As regards the prior Declaration of Isamu Yamaguchi, filed 14 March 2005, under 37 C.F.R. 1.132, it is pointed out that that document addresses only three dyes, one a threne dye, C.I. Vat Red 10, a direct dye, C.I. Direct Red 31 and a reactive dye, C.I. Reactive Red 2. Nothing conclusive as the sweeping conclusion regarding "heat discoloration resistance and weatherability" of all threne dyes, in comparison to all direct dyes and all reactive dyes can be made, or even vaguely speculated. The only conclusion made can be in regard to those dyes to which the comparison was made. Regardless, nothing is recited in the claims drawn to any aspect of "heat discoloration resistance and weatherability."

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kondou et al (EP 1 041 102 A1), cited by applicants, taken with Hinckley (US 3,112,982), Sato et al (US 4,244,690) or Blumenberg et al (US 6,797,015).

The reference to Kondou et al (EP 1 041 102 A1) teaches the manufacture of a resin composition comprising fibers of "viscose cellulose mass-colored with pigments," wherein the resin composition is identical to that as disclosed and recited in instant claim 6. Note the Abstract and paragraphs [0007], and [0010] which teaches the use of anthraquinone dyes, which comprise the threne dyes employed herein. Note paragraphs [0015] and [0016] which teach the identical resin composition as recited herein. Finally, note the many Examples. The reference does not show the use the specific threne dyes for cellulose, viscose or cotton, as herein claimed. The reference does disclose the fibers as being "mass-colored."

The references to Hinckley (US 3,112,982), Sato et al (US 4,244,690) or Blumenberg et al (US 6,797,015) all teach the conventionality of using the specific threne dyes recited in claim 1 with cellulose fibers, including viscose and cotton, as recited in claim 2, with a pre-dying process.

The reference to Hinckley (US 3,112,982) teaches the use of C.I. Vat Red 10, C.I. Vat Blue 14, C.I. Vat Green 1 and C.I. Vat Black, as recited in claims 1 and 13 for dyeing rayon (viscose cellulose). Note column 1 (lines 50-69) for the fibers and column 2 (lines 15-50) for the specific dyes.

The reference to Sato et al (US 4,244,690) teaches the use of C.I. Vat Red 10, C.I. Vat Violet 1 and C.I. Vat Black, as recited in claims 1 and 13 for dyeing cotton and viscose rayon, as recited in claim 2. Note column 3 (lines 1-7) for the fibers and Table 4 at column 6 (lines 15-28) for the specific dyes.

The reference to Blumenberg et al (US 6,797,015) teaches the use of C.I. Vat Green 1, as recited in claim 1 for dyeing cellulose fibers, including viscose, as recited in claim 2. Note the paragraph bridging column 3 to column 4 for the fibers and column 5 (lines 7-32) for the specific dye.

The reference to Kondou et al (EP 1 041 102 A1) teaches the basic concept. Choice of a filler that is pre-dyed is clearly within the skill of an artisan. Further, the recitations of particular size for the fibers do not lend patentability to the claims since these sizes are deemed to be a matter of aesthetic choice and availability of materials as well as costs. The secondary references all teach the conventionality of using the dyes claimed. The primary reference teaches the desirability of using mass-colored fibers as a suitable filler in the matrix. As such, the recitations of the instant claims would clearly be obvious over the teachings of the references. No unexpected or surprising results have been shown on the record.

Response to Arguments

Applicant's arguments filed 14 March 2006 have been fully considered but they are not persuasive.

With regard to the reference to Kondou et al (EP 1 041 102 A1), the document teaches at paragraph [0011] that "the pigment used for coloring the viscose rayon fiber is not particularly limited." The reference then proceeds to list anthraquinone, as shown at page 81 of the Hawley's Condensed Chemical Dictionary is classified as a "dye." The term "pigment," *ibid.* p.882, is synonymous with dye and colorant; the term "dye" is shown, *ibid.* p. 432, to be a colorant; the term "colorant" is taught, *ibid.* p.289, to provide "no generally accepted distinction between dyes and pigments," and that "dyes...are soluble synthetic organic products," which definition includes the anthraquinone dyes. Applicants allege that the anthraquinones refer to pigments, but have failed to show any distinction. The reference does not provide a clear distinction between dyes and pigments and employs both in the manufacture of their fibers. Nothing in the claims is drawn to the "standpoint of heat resistance and weatherability" and such a recitation and the arguments pertaining to such would be held as irrelevant since the references used in the rejection show the conventionality of all aspects of the composition. Applicants argue the merits of Kondou et al as though the rejection was made under 35 USC 102, which it was not. Applicants then attempt to characterize the secondary references as not showing a molded product. Applicants fail to admit that the reference to Kondou et al shows such. The references to Hinckley, Sato et al and Blumenberg et al were relied upon to show the specific dyes with cellulose fibers as conventional.

Again, applicants address their arguments as though separate rejections have been made under 35 USC 102, which they were not.

Although the claims have been shown to be obvious under 35 USC 103, applicants refuse to acknowledge the broad teachings of the references and allege distinct differences without showing why there is any distinction. Applicants' contention that claim 8 is "separately patentable" due to the amount of dye as being "from 7 to 15 wt. %" is untenable since any artisan would know to vary the amounts of a colorant to achieve particular desired effects.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

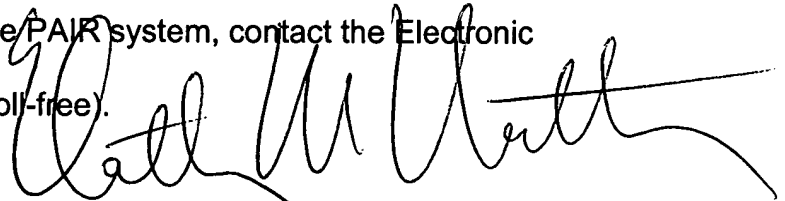
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathan M. Nutter whose telephone number is 571-272-1076. The examiner can normally be reached on 9:30 a.m.-6:00 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James J. Seidleck can be reached on 571-272-1078. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Nathan M. Nutter
Primary Examiner
Art Unit 1711

nmn

6 May 2006